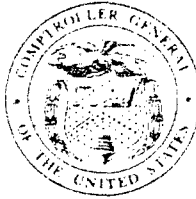


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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-201954

DATE: February 19, 1981

MATTER OF: Advance Machine Company

06201

[Untimely Protest of Small Business Set-Aside Restriction]

DIGEST:

Where protest of solicitation deficiency is filed initially with contracting agency, any subsequent protest filed with GAO more than 10 days after closing date for receipt of proposals is untimely.

Advance Machine Company protests the setting aside for small business of request for proposals (RFP) No. 7CF-51980/L5/7FC by the General Services Administration (GSA). We dismiss the protest as untimely.

The set-aside restriction is imposed by the RFP provisions. Protests which are based upon alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to such closing date. 4 C.F.R. § 20.2(b)(1) (1980). It is not clear from the documents submitted by Advance whether this requirement was met. Closing date for receipt of proposals was on January 14, 1981. On December 30, 1980 Advance mailed a letter of protest to a Small Business Administration (SBA) representative, apparently at the location of the contracting activity, but did not protest directly to the contracting officer at GSA until January 23, 1981. The documents do not indicate whether the contracting officer was furnished the original protest, prior to the date of closing, by the SBA representative.

We need not resolve this issue, however, for even if Advance did initially file a timely protest with GSA, the protest to our Office must still be dismissed as untimely.

Our Bid Protest Procedures provide that:

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"* * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of * * * initial adverse agency action will be considered * * *." 4 C.F.R. § 20.2.

Assuming that the protest was filed with the contracting officer prior to the closing date, GSA's proceeding with the closing as scheduled without taking any corrective action constitutes adverse agency action. Therefore, to be considered timely, any subsequent protest filed here would have to be filed within 10 working days thereafter. California Computer Products, Inc., B-193611, March 6, 1979, 79-1 CPD 150. Since we did receive the Advance protest until January 30, 1981, which is more than 10 working days after the date of closing, the protest is untimely and not for consideration.

The protest is dismissed.

For

Harry R. Jan. 1981
Milton J. Socolar
General Counsel